

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SERGEI KISHCHENKO,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 4:20-cv-00898-RLW

MEMORANDUM AND ORDER

This matter comes before the Court on movant Sergei Kishchenko's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (Docket No. 2). For the reasons discussed below, the Clerk of Court will be directed to file the motion as a supplement to movant's § 2255 motion in *Kishchenko v. United States*, 4:19-cv-922-RLW, which is currently pending in this Court. Additionally, the instant action will be administratively closed.

Background

Movant is a self-represented litigant currently incarcerated at the Montgomery Federal Prison Camp in Montgomery, Alabama. On May 22, 2018, he was sentenced to a term of sixty months' imprisonment and three years of supervised release in the United States District Court for the Eastern District of Missouri. *United States v. Kishchenko*, No. 4:16-cr-66-RLW-3 (E.D. Mo.). He timely filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 on April 15, 2019. *Kishchenko v. United States*, No. 4:19-cv-922-RLW (E.D. Mo.). In the motion, movant alleged ineffective assistance of counsel. The motion is currently pending before the Court.

On December 30, 2019, movant was one of eight prisoners to file a joint civil action titled "Application for Habeas Corpus" in the United States District Court for the Middle District of

Alabama, Northern Division. *Pate, et al. v. Wood*, No. 2:19-cv-1078-WHA (M.D. Ala.). That same day, the Middle District of Alabama ordered the case to be severed, and a new civil action opened for each of the prisoners.

Subsequently, the Middle District of Alabama reviewed movant's motion and construed it as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. *Kishchenko v. Wood*, No. 2:19-cv-1087-MHT (M.D. Ala. Jan. 7, 2020). The Middle District of Alabama gave movant three options on how to move forward: (1) he could proceed only on the claims he presented in his § 2255 motion; (2) he could amend his § 2255 motion to assert any additional claims; or (3) he could withdraw the construed § 2255 motion and dismiss the action. Movant was further advised that if he did not file a response, the cause of action would proceed under § 2255, and the court would only consider those claims contained in the motion.

It does not appear that movant filed a response, so the matter proceeded as a § 2255 motion.

On June 12, 2020, a magistrate judge of the Middle District of Alabama recommended that the case be transferred to the United States District Court for the Eastern District of Missouri. By way of reason, the Middle District of Alabama explained that a motion pursuant to § 2255 is properly brought only in the district of conviction. As movant's self-described 28 U.S.C. § 2241 petition had been construed as a § 2255 motion, the court determined that venue and jurisdiction lie with this Court. Movant was given an opportunity to file an objection to the magistrate's recommendation.

Movant filed an affidavit in which he stated that he had no objection to the transfer of this action to the United States District Court for the Eastern District of Missouri. *Kishchenko v. United States*, 2:19-cv-1087-MHT-SMD (M.D. Ala. Jun. 29, 2020). The Middle District of Alabama thereupon transferred this matter on July 8, 2020.

Discussion

The instant action has been construed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, and has been transferred to this Court by the United States District Court for the Middle District of Alabama. Upon receipt of the transfer, the instant case was docketed as a new § 2255 motion. As discussed above, however, movant already has a pending § 2255 motion in this Court. In order to avoid confusion and duplication of effort, the Court will direct the Clerk of Court to file the instant motion (Docket No. 2) as a supplement to movant's § 2255 motion in his pending § 2255 case, which is docketed as *Kishchenko v. United States*, 4:19-cv-922-RLW. Furthermore, the Court will direct the Clerk of Court to administratively close the instant case.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court shall file Docket Number 2 as a supplement to movant's § 2255 motion in *Kishchenko v. United States*, 4:19-cv-922-RLW.

IT IS FURTHER ORDERED that the Clerk of Court shall **ADMINISTRATIVELY CLOSE** the instant case.

Dated this 10th day of July, 2020.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE